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as Trustee of SORENSEN RESEARCH AND  
DEVELOPMENT TRUST

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JENS ERIK SORENSEN, as Trustee of  
SORENSEN RESEARCH AND  
DEVELOPMENT TRUST,

Plaintiff,

v.

HELEN OF TROY Texas Corporation;  
OXO International Ltd.; and DOES 1-  
100,

Defendants.

) Case No. 07-CV-02278-BTM-CAB  
)  
) **DECLARATION OF J. MICHAEL**  
) **KALER IN SUPPORT OF**  
) **PLAINTIFF'S OPPOSITION TO**  
) **DEFENDANT'S MOTION TO STAY**  
) **PENDING OUTCOME OF**  
) **REEXAMINATION PROCEEDINGS**  
)  
) Date: February 22, 2008  
) Time: 11:00 a.m.  
) Courtroom 15 – 5<sup>th</sup> Floor  
) The Hon. Barry T. Moskowitz  
)  
) *NO ORAL ARGUMENT*  
) *UNLESS REQUESTED BY THE COURT*  
)  
)  
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)

1 I, J. Michael Kaler, declare:

2 1. I am not a party to the present action. I am over the age of eighteen. I  
3 have personal knowledge of the facts contained within the following paragraphs, and  
4 could and would competently testify thereto if called as a witness in a court of law.

5 2. At all times relevant herein I have been an attorney for Sorensen  
6 Research and Development Trust ("SRDT"), Plaintiff in the above-captioned matter.

7 3. This Declaration is being submitted in conjunction with Plaintiff's  
8 Opposition to Defendants' Motion for Stay Pending Outcome of Reexamination  
9 Proceedings.

10 4. A related '184 patent case, Sorensen v. Black & Decker Corporation, et  
11 al, Case No. 06cv1572, has been stayed pending a third-party patent reexamination  
12 requested filed in July 2007 by Black & Decker ("1<sup>st</sup> reexamination"). The 1<sup>st</sup>  
13 reexamination is already in its seventh month and the first office action has not yet  
14 issued.

15 5. Plaintiff declined to file an optional patent owner's statement in  
16 response to the reexamination request in order to shorten the reexamination process.  
17 Black & Decker was thereby barred from a second filing with the USPTO regarding  
18 the 1<sup>st</sup> reexamination.

19 6. A full six months after the 1<sup>st</sup> reexamination request had been filed, co-  
20 defendants Phillips Plastics and Hi-Tech Plastics filed their own third-party  
21 reexamination request ("2<sup>nd</sup> reexamination") with the USPTO, citing some of same  
22 prior art listed in the 1<sup>st</sup> reexamination request.

23 7. Although the USPTO has not yet issued any response to the 2<sup>nd</sup>  
24 reexamination request, which is not due until about March 23, 2008, it is likely that  
25 this 2<sup>nd</sup> reexamination request will complicate and lengthen the time from the 1<sup>st</sup>  
26 reexamination filing to completion of the reexamination.

27 8. Based on more recent research, the likely time period for conclusion of  
28 a reexamination is at least five years, extending to nearly eight years if an appeal is

1 made to the Federal Circuit. In the past, it was reported that reexaminations  
2 generally take from six months to three years. *Telemac*, 405 F. Supp.2d at 1110  
3 (citing *In re Cygnus Telecomm. Tech., LLC Patent Litig.*, 385 F.Supp.2d 1022, 1023  
4 (N.D.Cal. 2005). These numbers may be based on outdated information. The San  
5 Diego Intellectual Property Lawyers Association (“SDIPLA”) newsletter, SDIPLA  
6 News, Vol. 11, Issue 10, Feb. 2008, reports that when one looks only at recent years,  
7 “the average ex parte reexamination now takes about 5 years (vs. the PTO’s claim  
8 that it takes 2 years). If an appeal to the CAFC is involved, that extends the period to  
9 7.7 years.”

10  
11 RESPECTFULLY SUBMITTED this Friday, February 08, 2008.

12  
13 JENS ERIK SORENSEN, as Trustee of  
14 SORENSEN RESEARCH AND DEVELOPMENT  
15 TRUST, Plaintiff

16 /s/ J. Michael Kaler

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18 J. Michael Kaler, Esq.  
19 Attorney for Plaintiff  
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**PROOF OF SERVICE**

I, J. Michael Kaler declare: I am and was at the time of this service working within in the County of San Diego, California. I am over the age of 18 year and not a party to the within action. My business address is the Kaler Law Offices, 9930 Mesa Rim Road, Suite 200, San Diego, California, 92121. I am a member of the State Bar of California and the Bar of this Court.

On February 8, 2008, I served on the parties to this action the following documents:

**DECLARATION OF J. MICHAEL KALER IN SUPPORT OF PLAINTIFF'S  
OPPOSITION TO DEFENDANT'S MOTION TO STAY PENDING OUTCOME OF  
REEXAMINATION PROCEEDINGS**

| PERSON(S) SERVED  | PARTY(IES) SERVED   | METHOD OF SERVICE                                      |
|---|---|--|
| Erik B. Von Ziepel<br>Seyfarth Shaw LLP<br>2029 Century Park East, Suite 3300<br>Los Angeles, CA 90067<br>evonzeipel@seyfarth.com | Helen of Troy Texas<br>Corporation; Oxo<br>International Ltd. | Email--Pleadings Filed<br>with the Court via<br>CM/ECF |

- ☐ (Personal Service) I caused to be personally served in a sealed envelope hand-delivered to the office of counsel during regular business hours.
- ☐ (Federal Express) I deposited or caused to be deposited today with Federal Express in a sealed envelope containing a true copy of the foregoing documents with fees fully prepaid addressed to the above noted addressee for overnight delivery.
- ☐ (Facsimile) I caused a true copy of the foregoing documents to be transmitted by facsimile machine to the above noted addressees. The facsimile transmissions were reported as complete and without error.
- ☐ (Email) I emailed a true copy of the foregoing documents to an email address represented to be the correct email address for the above noted addressee.
- ☒ (Email--Pleadings Filed with the Court) Pursuant to Local Rules, I electronically filed this document via the CM/ECF system for the United States District Court for the Southern District of California.

1 I declare that the foregoing is true and correct, and that this declaration was executed on Friday,  
2 February 08, 2008, in San Diego, California.

3 /s/ J. Michael Kaler

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J. Michael Kaler